(2) In assessments where the scope of analysis is Federal, only the compensable value to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the compensable value to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the compensable value to the tribe should be counted.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5176, Feb. 22, 1988; 59 FR 14286, Mar. 25, 1994]

Subpart F—Post-Assessment Phase

§ 11.90 What documentation must the authorized official prepare after completing the assessment?

(a) At the conclusion of an assessment, the authorized official must prepare a Report of Assessment that consists of the Preassessment Screen Determination, the Assessment Plan, and the information specified in paragraphs (b) and (c) of this section as applicable.

(b) When the authorized official has used a type A procedure, the Report of Assessment must include the information specified in subpart D.

(c) When the authorized official has used type B procedures, the Report of Assessment must include all documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

[51 FR 27725, Aug. 1, 1986, as amended at 59 FR 14287, Mar. 25, 1994; 61 FR 20612, May 7, 1996]

§ 11.91 How does the authorized official seek recovery of the assessed damages from the potentially responsible party?

(a) At the conclusion of the assessment, the authorized official must present to the potentially responsible party a demand in writing for the damages determined in accordance with this part and the reasonable cost of the assessment. [See § 11.92(b) to determine how the authorized official must adjust damages if he or she plans to place recovered funds in a non-interest-bearing account.] The authorized official must deliver the demand in a manner that establishes the date of receipt. The demand shall adequately identify the Federal or State agency or Indian tribe asserting the claim, the general location and description of the injured resource, the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

(b) *Report of assessment.* The demand letter shall include the Report of Assessment as an attachment.

(c) *Rebuttable presumption.* When performed by a Federal or State official in accordance with this part, the natural resource damage assessment and the resulting Damage Determination supported by a complete administrative record of the assessment including the Report of Assessment as described in § 11.90 of this part shall have the force and effect of a rebuttable presumption on behalf of any Federal or State claimant in any judicial or adjudicatory administrative proceeding under CERCLA, or section 311 of the CWA.

(d) *Potentially responsible party response.* The authorized official should allow at least 60 days from receipt of the demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit. In cases governed by section 113(g) of CERCLA, the authorized official may include a notice of intent to file suit and must allow at least 60 days from receipt of the demand by the

potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit.

(e) *Statute of limitations.* For the purposes of section 113(g) of CERCLA, the date on which regulations are promulgated under section 301(c) of CERCLA is the date on which the later of the revisions to the type A rule and the type B rule, pursuant to *State of Colorado* v. *United States Department of the Interior,* 880 F.2d 481 (D.C. Cir. 1989), and *State of Ohio* v. *United States Department of the Interior,* 880 F.2d 432 (D.C. Cir. 1989), is published as a final rule in the FEDERAL REGISTER.

[53 FR 5176, Feb. 22, 1988, as amended at 59 FR 14287, Mar. 25, 1994; 61 FR 20612, May 7, 1996]

§ 11.92 Post-assessment phase—restoration account.

(a) *Disposition of recoveries.* (1) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by the Federal government acting as trustee shall be retained by the trustee, without further appropriation, in a separate account in the U.S. Treasury.

(2) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA, or sections 311(f)(4) and (5) of the CWA by a State government acting as trustee shall either:

(i) Be placed in a separate account in the State treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the State agency acting as trustee.

(3) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by an Indian tribe shall either:

(i) Be placed in an account in the tribal treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the Indian tribe.

(b) *Adjustments.* (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(c) *Payments from the account.* Monies that constitute the damage claim amount shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoration Plan required by § 11.93 of this part.

[53 FR 5176, Feb. 22, 1988, as amended at 59 FR 14287, Mar. 25, 1994]

§ 11.93 Post-assessment phase—restoration plan.

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, or sections 311(f)(4) and 311(f)(5) of the CWA, the authorized official shall prepare a Restoration Plan as provided in section 111(i) of CERCLA. The plan shall be based upon the Restoration and Compensation Determination Plan described in §§ 11.81 of this part. The Plan shall describe how the monies will be used to address natural resources, specifically what restoration, rehabilitation, replacement, or acquisition of the equivalent resources will occur. When damages for compensable value have been awarded, the Plan shall also describe how monies will be used to address the services that are lost to the public until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is completed. The Restoration Plan shall be prepared in accordance with the guidance set forth in § 11.81 of this part.